

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
vs.)
Juan Licea, Jr) Docket No. 1875
Correctional Officer)
Star # 16282)

DECISION

This matter coming on to be heard pursuant to notice before Kim R. Widup, Board Member, on June 16, 2016, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Juan Licea, Jr., hereinafter "Respondent," was appointed a Correctional Officer on November 26, 2007. Respondent's position as a Correctional Officer involves duties and responsibilities to the public; and

Each member of the Cook County Sheriff's Merit Board, hereinafter "Board," has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; and

The Board has jurisdiction of the subject matter of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes; and

The Respondent was personally served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint; and

The Board has heard the evidence presented by the Sheriff and the Respondent and has evaluated the credibility of the witnesses and supporting evidence. After considering the evidence, the Board finds as follows:

Background

On November 26, 2007, the Respondent was appointed a Correctional Officer and on January 14, 2011, the Respondent was assigned to Division II, Cook County Department of Corrections (CCDOC), 2700 S. California Avenue, Chicago, IL. On August 25, 2013, the Respondent was assigned to Division VIII, 2750 S. California Avenue, Chicago, IL.

On August 29, 2013 at approximately 04:13 hours, while on duty in Division VIII, Respondent observed Correctional Officer [REDACTED] (CO [REDACTED]) use excessive force against detainee [REDACTED] (detainee [REDACTED]) when CO [REDACTED] struck detainee [REDACTED] in the face with an open hand without justification. The Respondent failed to intervene during CO [REDACTED] use of excessive force against detainee [REDACTED] (at the trial of June 16, 2016, this

allegation was dismissed from the case by the Board based upon agreement between the Sheriff and the Respondent).

On August 29, 2013, Respondent failed to make immediate notification to his supervisor of the excessive force he witnessed by CO [REDACTED] against detainee [REDACTED]. Additionally, the Respondent failed to complete an Incident Report documenting that he witnessed the use of excessive force by CO [REDACTED] against detainee [REDACTED] when CO [REDACTED] struck detainee [REDACTED] in the face with an open hand. Finally, the Respondent failed to complete a Witness Statement as part of the Data Collection Form included in the Response to Resistance/Use of Force Packet documenting that he witnessed the use of excessive force by CO [REDACTED] against detainee [REDACTED] when CO [REDACTED] struck detainee [REDACTED] in the face with an open hand.

On August 29, 2013, a videotape recording from a stationary camera in Division VIII depicts CO [REDACTED] standing in front of detainees [REDACTED] and [REDACTED] in the hallway. The video further depicts CO [REDACTED] and detainee [REDACTED] speaking to each other for a few seconds. Additionally, the video depicts CO [REDACTED] walking up to detainee [REDACTED] and the Respondent walking from behind a desk and standing next to CO [REDACTED]. Finally, the video depicts Respondent witness the use of excessive force by CO [REDACTED] when CO [REDACTED] struck detainee [REDACTED] in the face with an open hand. The videotape recording does not depict detainee [REDACTED] acting in an aggressive manner or making any physical movements toward CO [REDACTED] at any time.

On August 20, 2014, the Respondent was interviewed and provided a signed statement to investigators from the Cook County Sheriff's Office of Professional Review (OPR). The Respondent admitted to investigators from OPR he failed to inform his supervisors of the incident between CO [REDACTED] and detainee [REDACTED] which occurred on August 29, 2013.

That the Respondent failed to conduct himself on and off duty in such a manner to reflect favorably on the Cook County Sheriff's Office (CCSO) and failed to maintain a professional demeanor and the Respondent's conduct throughout the incident on August 29, 2013, was unbecoming of an Officer of the CCSO.

By complaint dated March 13, 2015, upon a finding of guilt, the Petitioner sought the suspension of the Respondent from the Cook County Sheriff's Department for a period of 120 days.

Issues Presented

The Respondent was charged based on his actions detailed above with violations of the Rules and Regulations and General Orders of the Cook County Department of Corrections, specifically:

Sheriff's Order 11.2.1.0 - Response to Resistance/Use of Force Policy, in its entirety, including but not limited to, the following subparts:

II. POLICY

Officers shall use an amount of force reasonable and necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect the officer(s) or others from injury, as specified by federal/Illinois statutes and case law.

The CCSO utilizes the Use of Force Model (2010) – John C. Desmedt and Protective Safety Systems Incorporated to provide guidance on the appropriate amount of force to be used to effect a lawful purpose and to articulate a detailed report on the officer's actions. The Use of Force model employs the progressive and reasonable escalation and de-escalation of officer applied force in proportional response to the actions and level of resistance offered by a subject.

Every use of force greater than social control, officer presence or verbal control must be reported as outlined in this directive. Officers shall not unreasonably endanger themselves or another person to conform to the restrictions of this directive.

V. DEFINITIONS

E. Excessive force – The application of an unreasonable amount of force in a given incident based on the totality of the circumstances.

VIII. PROCEDURES

C. Intervention during excessive force incidents. If an officer knows that another officer is using excessive force against a subject, the officer must take appropriate action. The action required by the officer shall depend upon the circumstances of the incident. However, appropriate actions may include, but are not limited to, verbal or physical intervention, immediate notification to a supervisor, or a direct order by a supervisor to cease the use of excessive force.

D. Reporting alleged or actual excessive force incidents.

Any employee:

With knowledge of the suspected and/or actual excessive use of force or knowledge of an excessive use of force allegation shall immediately verbally report this information to his/her supervisor. The immediate supervisor shall report the verbal notification to the watch commander. The watch commander may require the employee to complete and submit a To/From Memorandum.

Witnessing a use of force incident shall be required to complete and submit to the responding supervisor a Witness Statement as part of the Data Collection Form completed by the watch commander prior to the end of the shift.

XIII. APPLICABILITY

A. By order of the Sheriff of Cook County, this Sheriff's Order applies to all CCSO officers and must be strictly observed.

B. Any conflicts with previous orders, policies or procedures shall be resolved in favor of this order.

- C. All CCSO officers are required to familiarize themselves with the contents of this order and to adhere to the policy established herein.

Sheriff's Order 11.2.2.0 – Response to Resistance/Use of Force Duties, Notifications and Reporting Procedures, in its entirety, including but not limited to, the following subparts:

II. POLICY

Staff involved in a response to resistance/use of force incident, whether on-duty or off-duty must be in compliance with procedures stated in the current CCSO Response to Resistance/Use of Force Policy.

The CCSO utilizes the Use of force Model (2010) – John C. Desmedt and Protective Safety Systems Incorporated to provide guidance on the appropriate amount of force to be used to accomplish a lawful purpose and to articulate a detailed report on the officer's actions. The Use of Force Model employs the progressive and reasonable escalation and de-escalation of officer applied force in proportional response to the actions and level of resistance offered by a subject.

Every response to resistance/use of force greater than social control, officer presence or verbal control must be reported as outlined in this directive.

V. DUTIES, NOTIFICATIONS, AND REPORTING PROCEDURE

- A. Reporting alleged or actual excessive force incidents.
Any employee:
 1. With knowledge of the suspected and/or actual excessive use of force or knowledge of an excessive use of force allegation shall immediately verbally report this information to his/her supervisor. The immediate supervisor shall report the verbal notification to the watch commander. The watch commander may require the employee to complete and submit a To/From Memorandum.
 2. Witnessing a use of force incident shall be required to complete and submit to the responding supervisor a Witness Statement as part of the Data Collection Form completed by the watch commander prior to the end of the shift.

XIII. APPLICABILITY

- A. By order of the Sheriff of Cook County, this Sheriff's Order applies to all CCSO officers and must be strictly observed.
- B. Any conflicts with previous orders, policies or procedures shall be resolved in favor of this order.
- C. All CCSO officers are required to familiarize themselves with the contents of this order and to adhere to the policy established herein.

General Order 24.9.1.0 – Reporting Incidents - in its entirety, including but not limited to, the following subparts:

II. POLICY

It is the policy of the CCDOC to have written procedures for reporting and documenting incidents involving staff, inmates, and visitors, as well as to ensure that incidents or problems with the facility, i.e., sanitation, plumbing, electrical, ventilation, or any other situation that creates a dangerous workplace, are reported and documented in a timely and professional manner.

Employees shall immediately report to their supervisor any information indicating a violation or attempted violation of criminal laws, or a threat to the safety and security of the facility, its property or any person.

Reports shall be made verbally and in writing as directed by this order.

VII. PROCEDURES

A. Notification

1. All reportable incidents occurring within CCDOC involving staff, inmates, or visitors are required to be verbally reported and documented on an Incident Report by staff via the chain of command.
2. Response to resistance/use of force incidents by staff shall be reported in accordance with the current Cook County Sheriff's Office (CCSO) Response to Resistance/Use of Force Policy.

B. Incident Report Requirements

1. All Incident Reports must be entered into the IMACS system. If the system is not available, the reporting officer shall manually complete the Incident Report. All incidents reported by manually completing an Incident Report are to be reported to the Incident Tracking Line and receive a tracking number.
2. CCDOC staff shall completely and accurately document any incident or situation that he or she observes or that is reported to him/her.
3. All CCDOC staff shall promptly prepare the Incident Report and forward the report to the supervisor.
6. Incident Reports shall be prepared immediately after an incident in order to be as accurate as possible; however, they shall be completed, submitted and reviewed by a supervisor prior to being relieved from duty.

C. Any employee failing to file a report or filing a false report shall be subject to disciplinary action up to and including termination of employment and/or the filing of criminal charges.

F. General Reporting Guidelines

2. Complete and accurate documentation of events and incidents within CCDOC facilities and other sites are essential. Written reports and reports in IMACS serve to keep staff informed of developments and problem areas within the facility. Reports are also instrumental in the planning and implementation of Sheriff's Office policies and procedures.

VIII. APPLICABILITY

This General Order is applicable to all employees of the Cook County Department of Corrections. All employees shall familiarize themselves with the contents of this order. All supervisors will review the contents of this order with all employees under their supervision as appropriate, and ensure the provisions as outlined are strictly adhered to. This order is for strict compliance.

Sheriff's Order 11.2.20.0 – Rules of Conduct, in its entirety, including but not limited to, the following subparts:

II. POLICY

The CCSO serves the citizens of Cook County by performing law enforcement functions in a professional manner, and it is to these citizens that the CCSO is ultimately responsible. Employees of the CCSO shall conduct themselves in a professional and ethical manner both on and off duty. Employees shall not engage in activities that reflect unfavorably on the CCSO but shall instead serve to further the mission of service.

III. APPLICABILITY

This order is applicable to all employees of the CCSO and is for strict compliance. Any violations of this Sheriff's Order may result in disciplinary action up to and including termination. Any conflicts with existing directives shall be resolved in favor of this order.

VI. RULES AND REGULATIONS FOR ALL SWORN AND CIVILIAN CCSO EMPLOYEES

A. Compliance with Laws, Ordinances, and Regulations

2. Employees shall comply with lawful rules, Sheriff's Office written directives, verbal orders, SEAM articles, and political prohibitions issued by the proper authorities.
3. Employees shall respect and protect the civil and legal rights of all individuals.

B. Conduct on and off duty.

CCSO employees shall:

1. Maintain a professional demeanor while on duty and will not engage in off-duty behavior that would reflect negatively on the CCSO.
2. Conduct themselves on and off-duty in such a manner to reflect favorably on the CCSO. Employees, whether on or off-duty, will not engage in conduct which discredits the integrity of the CCSO, its employees, the employee him/herself, or which impairs the operations of the CCSO. Such actions shall constitute conduct unbecoming of an officer or employee of the CCSO.
4. Maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Employees will not participate in any incident that:
 - b. Causes the CCSO to be brought into disrepute.

Furthermore, the Respondent's actions violated the Rules and Regulations of the Cook County Sheriff's Merit Board, specifically:

Cook County Sheriff's Department Merit Board Rules and Regulations, in its entirety, including but not limited to, the following subparts:

Article X, Paragraph B:

No Police Officer, Police Sergeant, Police Lieutenant of the Cook County Sheriff's Police Department, Correctional Officer, Correctional Sergeant, Correctional Lieutenant, Correctional Captain of the Cook County Department of Corrections or Deputy Sheriff, Deputy Sergeant, Deputy Lieutenant of the Cook County Sheriff's Court Services Department will:

Violate any of the Sheriff's Executive Orders, General Orders, Special Orders, Directives or Rules and Regulations of the Cook County Sheriff's Department or Cook County Sheriff's Merit Board Rules and Regulations.

Findings of Fact

This matter was combined with Docket number 1876 (Respondent [REDACTED] - CO [REDACTED] and called for trial on June 16, 2016, after the case was continued on several occasions based upon the needs of the Petitioner (Sheriff) and/or the Respondent's request through counsel, and the completion of all discovery matters. At the trial, with a court reporter being present, all witnesses were sworn under oath. The Respondent did testify. During the trial documents were introduced by the Sheriff and the Respondent that were received into evidence. Additionally, there were certain documents that were admitted as exhibits through agreed upon stipulations by both parties. The Sheriff and Respondent made closing arguments addressing issues in the trial.

Through stipulation between the parties, the following exhibits were introduced and admitted as joint exhibits: the Sheriff's complaint against the Respondent, dated February 10, 2016 (J-Exhibit 1); the surveillance video of the incident, dated August 29, 2013 (J-Exhibit-2); CO [REDACTED]'s Resistance/Use of Force Form, dated August 29, 2013 (J-Exhibit 3); CO [REDACTED] Incident Report, dated August 29, 2013 (J-Exhibit 4); CO [REDACTED] signed statement to OPR collectively introduced with the Notification of Allegations, the Notification of Administrative Proceeding Rights, and the Waiver of Legal Counsel (J-Exhibit 5); Sheriff's Order 11.2.1.0 (J-Exhibit 6); Sheriff's Order 11.2.2.0 (J-Exhibit 7); Sheriff's General Order 24.9.1.0 (J-Exhibit 8); Sheriff's Order 11.2.20.0 (J-Exhibit 9); and Article X of the rules and regulations of the Cook County Sheriff's Merit Board. (J-Exhibit 10).

CO [REDACTED] counsel requested, and the Board granted, Judicial Notice that the Complaint against the CO [REDACTED] was relevant to the proceedings.

Additionally, CO [REDACTED] (the Respondent in docket 1876) introduced the following exhibits: Respondent [REDACTED] Exhibit 1 (RB-Exhibit 1) was the Collective Bargaining Agreement (CBA) between the Sheriff and Teamsters Local 700; RB-Exhibit 2 was group exhibit including CO [REDACTED] resume, letters of commendation and reference, and several articles and features regarding CO [REDACTED] performance; RB-Exhibit 3 was a packet comprised of 21 pages of individual certificates from CO [REDACTED] personnel file; RB-Exhibit 4 was a group exhibit of CO [REDACTED] training records; and RB-Exhibit 5 was a group exhibit regarding CO [REDACTED] work attendance history.

After a brief opening statement by the Sheriff and the Respondent's counsel (Respondent Licea), the first witness called by the Sheriff was [REDACTED] Investigator, OPR, who testified that he was the investigator assigned to investigate the matter involving the Respondent and CO [REDACTED]. He testified that he had been with OPR for 3 1/2 years. Investigator [REDACTED] testified that he completed the investigation of the Respondent and CO [REDACTED] that had been initially investigated by another OPR Investigator [REDACTED] who left OPR. He testified that as part of his investigation he reviewed the interviews, documents and videos that had been obtained by his predecessor. In the conducting of this investigation he was also looking into the activities of Commander [REDACTED] and Sergeant [REDACTED] CCDOC, regarding the incident.

Investigator [REDACTED] testified that he interviewed the CO [REDACTED] who was accompanied by his union representative, at OPR in March of 2014. CO [REDACTED] executed certain documents regarding interview warnings/waivers and provided a signed statement (J-Exhibit 5). During the interview, after being shown a picture of detainee [REDACTED] by Investigator [REDACTED] CO [REDACTED] said that detainee [REDACTED] did not comply with his orders to tuck in his shirt, started threatening CO

[REDACTED] and his family and made an aggressive move. This is what caused CO [REDACTED] to "use an open hand strike to control the situation." Investigator [REDACTED] was asked if CO [REDACTED] said whether there were others present during the incident with detainee [REDACTED] and CO [REDACTED] told him that the Respondent was present. He said that he reduced the interview to a statement and gave CO [REDACTED] an opportunity to make any changes. CO [REDACTED] made one change (J-Exhibit 5).

Investigator [REDACTED] said that he interviewed the Respondent in August of 2014 at OPR. The Respondent was accompanied by his union representative. During the interview Investigator [REDACTED] went over the Respondent's interview (part of Sheriff's Exhibit 1, dated September 11, 2013) that he had with a previous OPR investigator in which the Respondent was regarded as a witness. The Respondent had said in his previous interview that he did not believe he had to complete a witness report for the use of force report as he thought Sgt [REDACTED] already knew what occurred. Investigator [REDACTED] documented this interview with the Respondent into a written statement (Exhibit 1) in which he provided the Respondent with the opportunity to make any changes.

Investigator [REDACTED] was shown the video of the incident of August 29, 2013 (J-Exhibit 2), in which he identified the Respondent, three detainees including detainee [REDACTED] and CO [REDACTED]. Investigator [REDACTED] said in reviewing the video recording (J-Exhibit 2) of the incident he observed CO [REDACTED] using an open hand strike against detainee [REDACTED]. He was asked if he noticed anything different from the video then what he was told by CO [REDACTED]. He responded "yes" and said,

"Officer [REDACTED] had stated that detainee [REDACTED] had made an aggressive motion towards him, and in the video detainee [REDACTED] did not make any aggressive motions toward Officer [REDACTED]"

Investigator [REDACTED] said CO [REDACTED] had violated the Sheriff's general orders regarding the use of force. He said CO [REDACTED] did not separate the witnesses that were in the video – who were the other two detainees - and did not report their presence in his use of force memo (J-Exhibit 3) which was in violation of the Sheriff's general orders.

Investigator [REDACTED] said the Respondent violated the Sheriff's general orders by not filing a witness statement to the use of force and by not reporting that excessive force was used by CO [REDACTED].

Investigator [REDACTED] said he did not find that Sgt [REDACTED] violated any general orders as he was only acting on the information provided to him by CO [REDACTED] and did not have access to the video of the event. Investigator [REDACTED] said that he did find that Commander [REDACTED] had violated the use of force reporting general order.

Investigator [REDACTED] testified before he was employed with OPR he was a physical scientist for the FBI laboratory in Quantico, VA.

On cross examination by the Respondent's counsel, Investigator [REDACTED] testified that he had never worked as a CCDOC officer nor filled it out an incident report for anything. He further testified that he did not interview any CCDOC command channel staff as to what circumstances incident reports were to be filled out.

On cross examination by CO [REDACTED] counsel, Investigator [REDACTED] testified that he assumed this investigation from OPR investigator [REDACTED]. He could not recall the exact date he assumed the investigation but believed he completed his investigation in 2014. He testified that he interviewed CO [REDACTED] on March 21, 2014, which was before he interviewed the Respondent, Commander [REDACTED] and Sgt [REDACTED]. He said the he interviewed the Respondent in August of 2014. He had collected the reports from the incident and reviewed the video before he interviewed CO [REDACTED]. He had not reviewed the recommendation of the inmate Disciplinary Review Board (DRB) hearing before he interviewed CO [REDACTED]. He agreed the paperwork would have been included in the OPR file.

Investigator [REDACTED] said before the interview of CO [REDACTED] he filled out the notification to the officer form addressed to CO [REDACTED] (J-Exhibit 5). It stated, "On 8/29/2013 at 0413 hours CO [REDACTED] used excessive force on Detainee [REDACTED]. It did not contain any allegation concerning the CO [REDACTED] completion of his reports. Investigator [REDACTED] said the allegation was for use of force but their investigative protocol was that if information were discovered that was related to the underlying allegation it could be included in the investigation.

Investigator [REDACTED] said that he had CO [REDACTED] incident report and use of force report (J-Exhibits 3-4) when he interviewed CO [REDACTED]. He interviewed the Respondent as an accused in August of 2014. The Respondent had been previously interviewed as a witness by OPR Investigator [REDACTED] in September of 2013 (Exhibit 1). Investigator [REDACTED] incorporated the write-up of the September 2013 interview into the statement he took from the Respondent in August of 2014 (Exhibit 1).

Investigator [REDACTED] was asked if the Respondent confirmed that he heard detainee [REDACTED] state to Officer [REDACTED] "I will kill you motherfucker and your family. Do you live in Chicago? Fuck you, pussy ass motherfucker, I ain't tucking shit in." Investigator [REDACTED] said that he believed the Respondent said he heard a threat. He read the Respondent the direct quote and the Respondent could not remember if he heard the quote before or after CO [REDACTED] used an open hand strike against detainee [REDACTED]. Investigator [REDACTED] confirmed that the Respondent said detainee [REDACTED] was a hot head and was acting aggressively before the slap.

Investigator [REDACTED] said that he showed CO [REDACTED] a photo of detainee [REDACTED] before his interview and his use of force report. He could not recall if he showed CO [REDACTED] his incident report. He did not show CO [REDACTED] the video of the incident.

Investigator [REDACTED] testified that when he interviewed Sgt [REDACTED] he said that he did not have access to the video. Investigator [REDACTED] said that he learned that later employees could have access to videos by going through a unit with the CCDOC that collects all videos. Investigator [REDACTED] testified this was how OPR obtained videos for their investigations. He believed the training academy suggested CCDOC employees to obtain copies of videos before completing their use of force reports. Investigator [REDACTED] agreed that videos would not be available immediately after an incident occurred.

Investigator [REDACTED] was asked if he testified on direct that he "concluded the Officer [REDACTED] engaged in excessive force because officers are not allowed to use force when no force is used against them?" He responded, "correct."

After a discussion occurred between Investigator [REDACTED] and CO [REDACTED] counsel comparing sheriff's orders, the Desmedt Integrated Use of Force Model chart was introduced as

Joint Exhibit 11 (J-Exhibit 11). Investigator [REDACTED] agreed that the use of force could be used based upon the totality of the circumstances as per the model.

Investigator [REDACTED] was asked if he found that CO [REDACTED] was in violation of the Sheriff's and general orders because he did not separate witnesses or report any witnesses. He said that he did. When asked where was this obligation defined he said in the use of force reporting procedure general order. Investigator [REDACTED] said this allegation was not listed in the notice of allegations he gave CO [REDACTED]. He said CO [REDACTED] did confirm that the Respondent was present during the incident.

Investigator [REDACTED] was asked, "*isn't it true that you did not ask him any questions about why witnesses were not identified in his reports?*"

Investigator [REDACTED] said, "*I asked him to review his use of force report and he said he could only attest to his use of force report and that it was accurate.*"

Investigator [REDACTED] testified that he did not ask CO [REDACTED] why no witnesses were identified in the report. He was asked if CO [REDACTED] affirmatively denied the presence of witnesses in his use of force report. Investigator [REDACTED] said he never mentioned them. He was then asked if CO [REDACTED] affirmatively denied the presence of any witnesses when he was interviewed at OPR. Investigator [REDACTED] said that he had written that the Respondent was a witness and CO [REDACTED] had him change it to the Respondent was present. Investigator [REDACTED] said he did not know if there was a real difference there but he could say that the CO [REDACTED] denied witnesses.

Investigator [REDACTED] said he did not find any evidence that CO [REDACTED] had been involved in a previous use force incident.

On redirect examination Investigator [REDACTED] was shown Sheriff's Order 11.2.2.0, Section V B-1 f (J-Exhibit 7) and was asked what is B? He read "The officer involved in a use of force incident, whether on-duty or off-duty, must perform the following: (And) 1 (is) Be in compliance with all department procedures including: ... f. identifying, locating, and separating witnesses..." Investigator [REDACTED] said this would apply to the CO [REDACTED].

Investigator [REDACTED] testified that the amount of force that can be used, as per the Desmedt model (J-Exhibit 11), depended upon whether a detainee is a resistor or an assailant. He said in his review of the video (J-Exhibit 2), detainee [REDACTED] was a nonmoving resistor. He said based on his experience, per the Desmedt model, the use of a low pressure impact strike or mechanical direct strike would be under the category of Probable Excessive Control. Investigator [REDACTED] said he had worked over 25 excessive force cases in the past and the one involving CO [REDACTED] was not his first.

On re-cross examination by the Respondent's counsel, Investigator [REDACTED] confirmed CO [REDACTED] requested and initiated a change to the his statement (J-Exhibit 5) which changed the language from Licea witnessed the incident to Licea was present during the incident. He said that he did not have any role in the drafting of any general orders.

On re-cross examination by CO [REDACTED] counsel, Investigator [REDACTED] said that he did not know how many use of force investigations he had conducted before CO [REDACTED] matter. He said that he had not worked as a correctional officer but had been trained as a correctional officer. He said as an investigator he had never been required to engage in the use of force.

He was excused as a witness and the Sheriff rested their case.

CO Licea's (Respondent in Docket 1875) counsel opened his case by calling Sgt [REDACTED] (Sgt [REDACTED] [REDACTED] Sgt [REDACTED] testified that he had been a sergeant since 2012 and had worked for the CCDOC for 18 years total.

He testified on the date of the incident, August 29, 2013, he was working as a sergeant in RCDC. He said around 4:00 am he became aware of a use of force incident from CO [REDACTED] CO [REDACTED] advised him as to what happened with the detainee and Sgt [REDACTED] said he then reported this to the shift commander. He said he called the Respondent and had him escort the detainee to medical. He could not recall the exact amount of time that passed between the use of force and the time he called the Respondent but he guessed it was between 15 minutes to a ½ hour at most. His recollection was impacted by the passage of time. In response to the question, "Were you ever asked that question how much time passed between the incident and the phone call with Licea by OPR?" Sgt [REDACTED] responded, "I have never been to OPR for anything with this case." He then said that he could recall.

Sgt [REDACTED] testified that in the event a use of force occurred all officers involved in the use of force or witnessed the use of force are required to complete a use of force report or supplemental. He said that only one officer is required to complete an incident report and that officer is usually the primary officer involved. He said the practice of all officers completing an incident report stopped years ago "when we moved off paper incidents." He clarified this by stating that the primary officer is expected to complete the incident report. He said CO [REDACTED] did complete an incident report on this matter (J-Exhibit 4). He did not have an expectation that the Respondent would also complete an incident report on this event.

On cross-examination by CO [REDACTED] counsel, Sgt [REDACTED] said he knew that CO [REDACTED] completed an incident report and use of force report. He had also been verbally advised of the incident by CO [REDACTED] He did not have access to the video at the time of the even, nor did Commander [REDACTED] or the officers. He said the date of the incident was the first time he had ever worked with CO [REDACTED]

On cross-examination by the Sheriff, Sgt [REDACTED] said he did not witness the incident of August 29, 2103, and all the information he received about the incident was from CO [REDACTED] He testified that if another officer witnessed the incident they were required to fill out a witness statement in accordance with the Sheriff's general orders. He testified that if an officer witnessed another officer use excessive force they were required, per the general orders, to report it to a supervisor. He was asked if an officer witnesses another officer use excessive force was he required to complete an incident report. He said no. He was shown General Order 24.9.1.0 (J-Exhibit 8) which stated, "All reportable incidents occurring within CCDOC involving staff, inmates or visitors are required to be verbally reported and documented on an incident report by staff via the chain of command." He testified this was correct and agreed that if an officer observed another officer use excessive force he was required to report it.

Sgt [REDACTED] testified that he agreed that in the definitions the general order (J-Exhibit 8) stated, "Any incident or situation which disrupts the operations of the CCDOC or requires an investigation or follow up by CCDOC staff. Reportable incidents include but are not limited to unusual incidents and serious incidents." Sgt [REDACTED] agreed with this statement and agreed that an officer using excessive force would be a serious incident. He said CO [REDACTED] did not mention to him that the Respondent was present during the incident. Sgt [REDACTED] said when he

directed the Respondent to escort the detainee to medical he did not tell the Respondent about the incident. Sgt [REDACTED] said the only information he had regarding the incident was what CO [REDACTED] told him and CO [REDACTED] did not inform him that he had used excessive force against a detainee. He did not review the video of the incident at the time.

On redirect, Sgt [REDACTED] said he could not recall why he had the Respondent as opposed to some other officer escort the detainee to medical at the time. He said that he did not know of any requirement to complete multiple reports of an incident.

On re-cross examination, CO [REDACTED] counsel asked Sgt [REDACTED] if he knew any of the officers within the division at the time of the incident. He said that he did not. He testified that he did not remember asking CO [REDACTED] if there were any witnesses to the event.

[REDACTED] was called by the Respondent and testified that he was a sergeant with the CCDOC and had been a sergeant since 2013. He had been employed with the CCDOC since 2004. Sgt [REDACTED] testified he directly supervised the Respondent and had not ever observed any problems with him that needed supervisory direction, was not a discipline problem, had not observed him use force against a detainee, never had to review a use of force incident by the Respondent that he could recall, and had not received any complaints from detainees regarding the Respondent.

Sgt [REDACTED] testified that if force is used against a detainee, the primary officer who used force is required initiate an incident report and the secondary officers are required to "piggyback" a witness statement off of the initial incident report. If the other officers used force too, then they are required to complete a separate incident report, otherwise they are required to prepare a witness statement to the use of force. Sgt [REDACTED] testified when force is used one incident report is prepared regarding the incident and everything else, witness statements, the use of force statement, subject statements, are all from that one incident report that was generated.

On cross-examination by CO [REDACTED] counsel, Sgt [REDACTED] testified that he supervised CO [REDACTED] and did not have an the opinion that CO [REDACTED] was a hot head.

On cross-examination by the Sheriff, Sgt [REDACTED] testified that he had no knowledge regarding the incident involving CO [REDACTED]. He agreed that an officer who used excessive force was in violation of the Sheriff's general orders. He testified that an officer witnesses another officer who uses excessive force, he has a duty to report it to their supervisor as per the Sheriff's general orders and has a duty to prepare a witness statement.

Sgt [REDACTED] said that if another officer witnesses the use of force by another officer then a CCDOC memorandum would be prepared. Sgt [REDACTED] said he has not been involved in an excessive use of force situation by any of his officers in the nine years he has been with the CCDOC.

He met the Respondent in 2013 and is not friends with him. He has known CO [REDACTED] since 2004 when they both worked at the Statesville Penitentiary together. He considers CO [REDACTED] a friend; although they do not hang out together or visit each other's homes.

On redirect examination, Sgt [REDACTED] testified that he and the Respondent are friendly in the workplace and he considers him a great officer.

On re-cross examination by CO [REDACTED] counsel, Sgt [REDACTED] said his friendship with CO [REDACTED] has not influenced his testimony.

Sgt [REDACTED] CCDOC, was called by the Respondent. Sgt [REDACTED] testified that he had been a sergeant for three years and with the CCDOC for 23 years. Sgt [REDACTED] testified that he directly supervised the Respondent and never had to recommend discipline against him, had no problems with him, and believed he was a fine officer.

Sgt [REDACTED] testified that the difference between an incident report and use of force report. He said an incident report tells what generally happens in an entire incident and a use of force report is used to describe what happens when force is used against a detainee. He said only one officer is required to complete an incident report. He testified if multiple officers were involved in a particular incident, each officer who put their hands on the detainee were required to complete a use of force report. He testified that the officer who was present when the event initially started would be the one required to complete the incident report.

On cross examination by CO [REDACTED] counsel, Sgt [REDACTED] testified that he worked with CO [REDACTED] in a supervisory capacity. He testified that he could not recall ever having to initiate discipline against CO [REDACTED]. He was not involved in the incident of August of 2013, concerning CO [REDACTED] and detainee [REDACTED].

On cross examination by the Sheriff, Sgt [REDACTED] testified that an officer who witnesses excessive force is required to report it to a supervisor and that an officer who witnesses the use of force by another officer is required to complete a witness statement. Sgt [REDACTED] said that during his tenure as a sergeant he has had two cases during which an officer reported to him that another officer used excessive force.

On re-cross examination by CO [REDACTED] counsel, Sgt [REDACTED] testified that he was aware that remedial training was an option for supervisors to recommend concerning a use of force event.

On re-cross examination by the Sheriff, Sgt [REDACTED] testified that the decision whether or not to recommend remedial training was above his pay grade.

The Respondent was called by his counsel and testified that he had been employed with the CCDOC for eight years. The Respondent testified that he became aware of detainee [REDACTED] interacting with CO [REDACTED] about 4:00 in the morning. He became aware of them as CO [REDACTED] and detainee [REDACTED] were arguing. He recalled CO [REDACTED] directing detainees to tuck in their shirts and they all complied except detainee [REDACTED].

The Respondent testified that he provided a statement to OPR (Exhibit 1), initialing the first page, that was attached to a summary of an interview that he had with Investigator [REDACTED] on a previous occasion. The Respondent said that Investigator [REDACTED] did not show him this statement at his OPR interview. He said that he initialed the document on page 2 indicating that he looked it over. He agreed that he was acknowledging that the statement was accurate to the best of his knowledge. The Respondent testified that the sentence on page 2 that said, "C/O Licea said that he thought Detainee [REDACTED] was a hothead and was acting aggressively before the slap," was a reference to a verbal act. He believed detainee [REDACTED] was making verbally aggressive type statements. He could not recall everything that was said by the detainee to CO [REDACTED] because of the passage of time.

The Respondent testified that he did not complete a use of force witness report after witnessing CO [REDACTED] and the detainee as "it just didn't dawn on me to write that report." He further testified that at the time he did not know that he was required to prepare a witness report. Prior to this incident he had not ever filled out a use of force witness report.

The Respondent testified that he was responsible to know the Department's general orders. He knows now that he was required to complete a use of force witness report and admitted he was in the wrong by not completing the report at the time. He testified that not completing the report was not an intentional act and that he was forthcoming in all of his answers to Investigator [REDACTED]

The Respondent testified that he did not make notification of a command officer after the incident occurred. He did speak to Sgt [REDACTED] who asked him if detainee [REDACTED] was okay and the Sgt [REDACTED] directed him to take detainee [REDACTED] to Cermak. He thought the call with Sgt [REDACTED] occurred a few minutes after the incident. The Respondent believed that Sgt [REDACTED] knew about the incident which was why he asked if the detainee was okay. He could not recall if Sgt [REDACTED] attempted to elicit any additional information from him. The Respondent said that he had not been involved in any use of force incidents since this incident and could not recall if he had to complete any use of force witness statements since this event.

The Respondent was cross examined by CO [REDACTED] counsel and testified that detainees are required to be taken for medical attention following the use of force. He did not see any injuries on detainee [REDACTED] The Respondent testified this incident was the first time that he met CO [REDACTED]

The Respondent was cross examined by the Sheriff and testified that law enforcement officers such as himself have a responsibility to protect the safety of the staff and the other officers at the facility, this included the safety of the detainees as well. He testified that it was important to file the proper paperwork after an incident in the event that an investigation is conducted.

The Respondent testified that he was aware if he violated the Sheriff's general orders he could be disciplined. He said an officer could be charged criminal or sued if an officer used excessive force against a detainee.

The Respondent testified that prior to August 29, 2013, he had received Sheriff's general orders and that he was responsible for knowing these general orders. He testified that he was admitting that he failed to file a witness report based on the incident of August 29, 2013, and that he was aware that it was a violation of the Sheriff's general order. He testified that he was now aware that he had a duty to report excessive force if he saw it.

The Respondent was asked, "So it is your testimony that in August of 2013, you were not aware that if you observed an officer use excessive force that you needed to report it to a supervisor?"

The Respondent replied, "Well, at the time it just – it didn't dawn on me to write – to notify – to tell and notify a supervisor."

The Respondent testified that the reason that he did not notify a supervisor was that right after the incident CO [REDACTED] came up to him and said, "I need to go, and I need to notify a supervisor." This caused him to believe that he did not need to do it.

The Respondent testified that he observed CO [REDACTED] strike detainee [REDACTED]. He testified that he had been through yearly training on the use of force to include the application of the Desmedt model. He said that he was familiar with the terms resister, moving resistor and non-moving resistor. He was familiar with the term assailant as well. He did not observe detainee [REDACTED] make any movements toward CO [REDACTED] at the time of the incident. He has no recollection of detainee [REDACTED] making any movements toward CO [REDACTED] before he struck detainee [REDACTED]. He said there was an exchange of words between CO [REDACTED] and detainee [REDACTED].

The Respondent was shown the video (J-Exhibit 2) of the incident and asked about the point when CO [REDACTED] struck detainee [REDACTED] and that the only thing that was going on was an exchange of words between CO [REDACTED] and the detainee. The Respondent testified that was correct. After the incident he did not handcuff detainee [REDACTED] nor did CO [REDACTED]. He did not remove the detainee from the scene but was trying to deescalate the situation by telling detainee [REDACTED] to calm down as the detainee was being verbally aggressive.

The Respondent testified that when he told OPR that he observed detainee [REDACTED] acting aggressively, he was referring to his words toward CO [REDACTED]. It was not any actions that the detainee was making towards CO [REDACTED]. He testified that he initialed the second page of Sheriff's Exhibit 1 (Exhibit 1) at the time of the OPR interview after he had a chance to review the document.

After an on the record discussion regarding decisions of previous cases and asking the Board to take judicial notice of the existence of these cases which the Board did with the caveat that there was no consistency in the outcome of the previous cases in favor of either party; therefore, this matter would be decided upon by the evidence presented in this trial. The Respondent rested.

CO [REDACTED] opened their case with his counsel calling him to testify. CO [REDACTED] testified that he had been with the CCDOC for almost eight years. He testified to his family composition and the various assignments that he had within the CCDOC. He worked for the Illinois Department of Corrections (IDOC) for four years before coming to the CCDOC. He testified this incident was his first involvement with any use of force to include his four years at IDOC. He said he was assigned to Division VIII at the time of the incident which was the unit that dealt with detainees that various behavioral issues and problems. He had no specialized training regarding mental health detainees.

CO [REDACTED] testified that he had not encountered detainee [REDACTED] before the incident nor had he met the Respondent previously. CO [REDACTED] testified that he completed both the use of force report and the incident report shortly after the incident occurred (J-Exhibits 3-4). He testified that he did not know any of the witnesses to the event. He said that he was never questioned as to whether or not there were any witnesses to the event and said that he did not ever affirmatively deny there were any witnesses to the event. He testified that he did not see the video of the incident until his Loudermill hearing. He said after the incident with detainee [REDACTED] he was very stressful and fearful because he was in a new building and he found out there was a psychological war going on and he did not have the training he needed.

CO [REDACTED] testified that he went to OPR on March 24, 2014, after completing his eight-hour shift. He said the notice that required his appearance (J-Exhibit 5) made no mention that he was alleged to have falsified reports. He testified that he did not recall OPR asking him any

questions concerning the falsification of reports, failure to disclose witnesses, the completion of his reports, or the failure of identifying and separating witnesses. He informed OPR that the Respondent was present at the time.

CO [REDACTED] testified that in his statement to OPR (J-Exhibit 5) which stated, "C/O [REDACTED] stated Detainee [REDACTED] made an aggressive motion toward him," was an accurate representation of what happened and he stood by that statement. CO [REDACTED] testified in response to being asked if there was an affirmative aggressive motion immediately preceding the strike that,

"In my perception at the time when I was there in my mind what I was thinking, I was thinking that that was about to happen. It happened so fast, and that's what I perceived within my mind, you know, that based on, you know the environment that I was in, I was in fear, I was stressed out, you know, so it was -"

CO [REDACTED] testified that he did not have a clear recollection of the event when he was at OPR. He said that he was sent to use of force remedial training for a full day by Superintendent [REDACTED] after the incident. He testified that the training was in either 2014 or 2015. CO [REDACTED] testified that he has not had any use of force incidents since this event and he believes he is more competent and proficient since receiving the remedial training.

CO [REDACTED] was shown a packet of materials (RB- Exhibit 2) which he identified as his resume; a letter from the Chief Administrative Officer from Jackson, MS, thanking him for his time as a police detective; a commendation letter from the CCDOC; a number of documents commanding his actions relating to a stolen auto parts ring he worked as a police detective; and a commendation from the Sheriff in the form of a newsletter commanding his actions in the saving of a detainee who tried to hang himself. He was shown another packet of materials (RB-Exhibit 3) which he identified as being several certificates of academic and professional achievement. He identified his training materials from the CCDOC training academy which reflected that he was scored a four in every category but one that he scored a three (RB-Exhibit 4). He testified that he completed every aspect of his training to include winning the marksman award for his class. He further identified his attendance records (RB-Exhibit 5) that demonstrated he never had an attendance problem at the CCDOC.

CO [REDACTED] testified that he believed he learned from the remedial training that he received in use of force from the CCDOC and from management training at Robert Morris University which would both help him avoid future use of force incidents.

On cross examination by the Respondent's counsel, CO [REDACTED] testified that after the incident with detainee [REDACTED] he went and located a supervisor who was Sgt [REDACTED] and reported that he struck detainee [REDACTED]. He could not recall the amount of time that passed before he informed Sgt [REDACTED] but he believed it was not very long after the incident. He could not recall having any discussion with the Respondent about the incident before advising Sgt [REDACTED]

On cross examination by the Sheriff, CO [REDACTED] testified that August 29, 2013, was not the first time that a detainee refused his orders, was not the first time a detainee swore at it and was not the first time a detainee made threats toward him. He testified that he dealt with uncooperative detainees on a daily basis.

CO [REDACTED] testified that he had experience in law enforcement before coming to the CCDOC. He testified that he was at the IDOC for a number of years and a police officer for eight years. He testified that he was a police detective. CO [REDACTED] testified that before the date of the incident he had received training on the use of force. He testified that he was aware that he could not use excessive force against a detainee. He was asked if he witnessed detainee [REDACTED] make any movements toward him prior to striking him in the head. CO [REDACTED] testified, "*In my perception at that time that's what I thought was about to happen.*" He was asked to answer what happened as opposed to what he thought would happen and then he was asked again if detainee [REDACTED] made any movements towards him prior to striking him in the head. CO [REDACTED] testified, "*I plead the 5th.*"

A short recess was held in which CO [REDACTED] met with his counsel. Once back on the record, after the various parties checked with different sources, and the Board checked with the Board Chairman, the Board stated it would not order CO [REDACTED] to answer questions. The Board's position was that it was not within their purview to do so. The Board did not have the authority to grant immunity under Garrity or any other type of immunity to CO [REDACTED] -- so it remained with CO [REDACTED] to decide whether or not he chooses to assert his rights under the 5th Amendment (regarding self-incrimination). CO [REDACTED] was instructed that it was the right of the Sheriff and others to make a negative inference to his actions in a civil proceeding. It was decided the Sheriff would continue with his cross examination and it would be CO [REDACTED] choice as how he answered further questions. Both parties agreed.

CO [REDACTED] was asked by the Sheriff if he was going to invoke his 5th Amendment right pertaining to the question that he was asked regarding whether he saw detainee [REDACTED] make any movements toward him, CO [REDACTED] said, "*I plead the 5th sir.*" He was asked based on his recollection, did he recall detainee [REDACTED] making any movements toward him on August 29, 2013. CO [REDACTED] said, "*I mean, I plead the 5th, you know, because.*" He was asked if detainee [REDACTED] was making any verbal threats toward CO [REDACTED] before he struck the detainee in the head. CO [REDACTED] said, "*I plead the 5th sir.*" CO [REDACTED] continued to answer questions with, "*I plead the 5th.*" He was asked if he was pleading the 5th of his own will and volition, he responded, "yes sir." He was asked at the time of the incident, if he did not know the Respondent's name, he responded, "*That's true.*" He was asked additional questions about the incident to which CO [REDACTED] took the 5th.

He was asked questions regarding his previous employment with Alajobi Rehabilitative Services as to whether or not he dealt with residents who had mental health issues. CO [REDACTED] testified that some of them did, but he didn't work at the section where they were at. He was asked about his resume (RB-Exhibit 2) in which he listed that he "monitored the overall behavioral and mental status of juveniles assigned to the program," and if when he referred to mental status he was referring to mental health. CO [REDACTED] testified it's the well-being not mental health.

CO [REDACTED] testified that the no one from the Sheriff's office told him that he would escape discipline for this incident by taking the refresher training. He said that he believed the training would better help him understand the policies of the Sheriff's department so this would not happen again.

After a similar on the record discussion regarding decisions of previous cases made by the Respondent's counsel and asking the Board to take judicial notice of the existence of these cases, CO [REDACTED] asked that several cases be appended to the record (RB-Exhibits 6-9). The

Sheriff objected to their admission. They were appended to the record by the Board with the caveat that there was no consistency in the outcome of the previous cases in favor of either party; therefore, this matter would be decided upon by the evidence presented in this trial. CO [REDACTED] rested and both parties delivered their closings.

Decision

The Board finds by a preponderance of the evidence through the testimony of the witnesses; the exhibits in the case and, most significantly, the Respondent's own admission that he did not prepare a witness statement as required by the Sheriff's general orders. He also failed to report to his supervisor that excessive force had been used against a detainee.

The Board did find that the Respondent was reasonably credible and did demonstrate remorse by admitting his failure to file a witness statement; however, he failed to fully follow the reporting requirements in the sheriff's and general orders. This is problematic when those who review a use of force matter after the event don't have his independent report to rely on nor do they have his independent reporting of the event to supervision. The conduct of the other officer in this matter who used force against a detainee was serious and required an accurate reporting of the details of the event.

The Board is reducing the amount of his suspension from the recommended 120 days to a period of 90 days based on the Respondent's acceptance of responsibility of his actions and because of the Sheriff's dismissal of one of the allegations against the Respondent concerning his failure to intervene in the use of force incident. The Board is recommending that he receive additional training in an amount of hours as recommended by the Sheriff's Training Academy in the preparation of use of force reports, incident reports, witness reports and others in accordance with the Sheriff's and general orders.

It should be noted there appears to be some confusion at the sergeant level as to the requirement that incident reports are to be completed by each individual correctional officer present during an incident. Some believe that the initial correctional officer involved in the incident is responsible for preparing the report and others are only required to prepare a witness statement. Others believe that each officer who touched a detainee during an incident are responsible for preparing an incident report and the other officers are responsible for preparing a witness report. Finally, some believe that each officer, regardless of their role in the incident, are responsible for preparing an incident report. The triggering event for this confusion appears to be the changing of incident reports from a written to electronic format. It is recommended that the CCDOC clarify the process to alleviate the confusion.

The final order regarding the actions of CO [REDACTED] is reported under separate cover in docket number 1876; although, both cases were tried together on June 16, 2016.

Conclusions of Law

Based on the evidence presented and after assessing the credibility of the witnesses and the weight to be given the evidence in the record, the Board finds that Respondent Juan Licea, Jr., Star Number 16282, CCDOC, did violate Sheriffs Order 11.2.1.0, Section II, Section V, E, D1-2, Section XIII A, B, C; Sheriffs Order 11.2.2.0, Section II, Section V A1-2, Section XIII A-C; General Order 24.9.1.0, Sections II and VII, A1-2, B1-2,3&6, C and F-2, and Section VIII; Sheriffs Order 11.2.20.0, Sections II, III and VI, A2-3, B1-2, 4b; and Article X, Paragraph B3, of the Rules of the Cook County Sheriff's Merit Board.

The Board dismissed, upon the Sheriff's request, Sheriffs Order 11.2.1.0, Section VIII C.

Wherefore, based on the foregoing, it is hereby ordered that the Respondent Juan Licea, Jr., be suspended from duty for a period of 90 days and is further ordered to receive remedial training in the preparation of reports, effective February 10, 2016.

[REDACTED]
James P. Nally, Chairman

[REDACTED]
Byron Brazier, Vice Chairman

[REDACTED]
Gray Mateo-Harris, Board Member

[REDACTED]
John J. Dalicandro, Secretary

[REDACTED]
Jennifer E. Bae, Board Member

[REDACTED]
Kim R. Widup, Board Member

[REDACTED]
Patrick Brady, Board Member

[REDACTED]
Vincent T. Winters, Board Member

Dated:

10/12/16